



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

December 9, 1992

Ms. Judith M. Porras
General Counsel
General Services Commission
P. O. Box 13047
Austin, Texas 78711-3047

OR92-688

Dear Ms. Porras:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17456.

The Travel and Transportation Division of the General Services Commission (the "commission") has received three requests for proposals submitted in response to a certain solicitation issued by the commission for travel agency contracts. You advise us that of 21 proposals submitted, eight were awarded contracts. The first requestor seeks "a copy of the Region 3 contract winners proposal." The second requestor seeks "the responses of the RFP's" for six of the companies. The third requestor seeks "access to all documentation related to the evaluation process."¹ You ask whether the requested information is excepted from required public disclosure under the Open Records Act, but defer to the judgments of the companies as to whether specific proprietary interests may be implicated by the three requests.

Pursuant to section 7(c) of the act, we have notified the 21 companies whose interests may be affected by disclosure of the requested information. In response, we have received letters from ten companies: The All Seasons Travel Group, Atlas Travel, Inc., MultiNational Travels, Murray Travel, Sanborn's Travel Service, Sato Travel, Sun Travel, The Travel Store, Triangle Travel and Tours, and VIP

¹We understand information generated by the commission during the evaluation of the 21 companies to be clearly within the scope of the third request. Because you do not comment on this information, we assume that it has been or will be made available to the requestor. See Open Records Decision No. 363 (1983).

Supertravel. Briefly, the ten responding companies seek to withhold either their entire proposals or portions thereof for the following reasons:

1. The All Seasons Travel Group does not expressly invoke section 3(a)(10), but it claims that portions of its proposal are excepted from disclosure as information constituting "trade secrets."
2. Atlas Travel claims that portions of its proposal are excepted from disclosure under section 3(a)(10) as information constituting "trade secrets."
3. MultiNational Travels, without expressly invoking section 3(a)(10), claims that portions of its proposal are excepted from disclosure as information constituting "trade secrets."
4. Although Murray Travel does not expressly invoke section 3(a)(10), it claims that portions of its proposal are excepted from disclosure as "proprietary" information. Murray Travel does not indicate whether any of the information it seeks to protect constitutes "trade secrets" or is privileged or made confidential by law.
5. Sanborn's Travel Service seeks to withhold portions of its proposal, but does not claim that any of the information it seeks to protect constitutes "trade secrets" or is privileged or made confidential by law.
6. Sato Travel claims that its entire proposal constitutes a "trade secret" and is therefore excepted from required public disclosure by section 3(a)(10) as information constituting "trade secrets". In addition, Sato Travel claims that its proposal is excepted from required public disclosure by section 3(a)(4) of the Open Records Act. Finally, Sato Travel claims that its proposal was submitted to the commission under terms requiring non-disclosure and that release of the proposal would subject the commission to liability for breach of contract.

7. Sun Travel claims that its entire proposal is excepted by section 3(a)(10) as information constituting "trade secrets."

8. The Travel Store invokes section 3(a)(10) with respect to portions of its proposal, but does not explain whether the information constitutes "trade secrets" or is privileged or made confidential by law.

9. Triangle Travel and Tours claims that portions of its proposal are excepted under sections 3(a)(4) and 3(a)(10), but does not indicate whether any of the information it seeks to protect constitutes "trade secrets" or is privileged or made confidential by law.

10. VIP Supertravel claims that the some of the information in its proposal is excepted from disclosure by section 3(a)(10) as information constituting "trade secrets."

The remaining eleven companies--A to Z Travels, Capitol of Texas Travel, CTN Alameda Travel, Inc., Hamilton Travel, Hazlewood's Travel, Pace Travel, Inc., Premier Travel, Signature Travel, Inc., Travel Mart, White Heron, and World Travel International--have not responded to our invitation to submit arguments explaining why their proposals are excepted from disclosure under the Open Records Act. Accordingly, the information concerning these companies may not be withheld from required public disclosure and must be released. *See, e.g.*, Open Records Decision Nos. 405 (1983); 402 (1983).

We turn first to section 3(a)(4). Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions; ordinarily, it does not apply once, as here, contracts have been awarded. Open Records Decision No. 541 (1990). Neither the commission nor the respondents indicate why the requested information may be withheld under section 3(a)(4) at this time. Accordingly, the requested information may not be withheld under section 3(a)(4).

We turn next to section 3(a)(10). Section 3(a)(10) protects the property interests of private persons by excepting from required public disclosure two types

of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Commercial or financial information is excepted under section 3(a)(10) only if it is privileged or confidential under the common or statutory law. Open Records Decision No. 592 (1991) at 9.

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business* [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [Emphasis added.]

RESTATEMENT OF TORTS § 757, cmt. b (1939).

This office has previously held that if a governmental body takes no position with regard to the application of the "trade secrets" branch of section 3(a)(10) to requested information, we must accept a private party's claim for exception as valid under that branch if that party establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6² When neither the agency nor the company provides

²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

relevant information regarding factors necessary to make a 3(a)(10) claim, there is no basis to withhold the information under section 3(a)(10). See Open Records Decision No. 402 (1983).

We have examined the documents submitted to us for review and have considered the respondents' arguments. We conclude that Atlas Travel, MultiNational Travels, Murray Travel, Sanborn's Travel Service, Sun Travel, The Travel Store, and Triangle Travel and Tours have not provided us with information sufficient to establish a *prima facie* case that information contained in their proposals constitutes "trade secrets." Furthermore, we are aware of no statute or judicial decision that makes any information contained in their proposals privileged or confidential. Accordingly, we conclude that their proposals may not be withheld under section 3(a)(10) of the Open Records Act and must be released in their entirety.

The All Seasons Travel Group claims "trade secret" protection for specific portions of its proposal relating to Airline Reporting Corporation numbers, sales volume, company locations and staffing, personnel to workload ratio, current and previous clients, performance survey program, quality control procedures, automated information exchange capabilities, discount rate/fare programs, company financial condition, group fares and rates, informational meetings and seminars, management information reports, special amenity services, traveler feedback systems, flight insurance, reduced rate parking privileges, assistance with visa and passport processing, stolen baggage assistance programs, user-friendly automated reservation systems, and rebates. We have examined the documents submitted to us for review and have considered the arguments of All Seasons Travel Group. We conclude that All Seasons Travel Group has made a *prima facie* case

(footnote continued)

(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757, cmt. b (1939); see also Open Records Decision Nos. 319, 306 (1982); 255 (1980).

that some of the information for which it seeks protection under section 3(a)(10) of the Open Records Act constitutes "trade secrets." Accordingly, we conclude that the following information must be withheld from required public disclosure under section 3(a)(10) of the Open Records Act: information regarding current and previous clients (Section 4.6, Page 11), the performance survey program (Section 4.9, item 4, Page 15), quality control procedures (Section 4.10, item 1, Pages 16-18), automated information exchange capabilities (Section 4.12, Pages 20-21), discount rate/fare programs (Section 4.13, Pages 22-27), group fares and rates, (Section 5.3.4, Pages 41-42), informational meetings and seminars (Section 5.4.1, item 3, Pages 43-44), management information reports (Section 5.7.1., Page 48), special amenity services (Section 5.11.1, item 2, Pages 52-53), reduced rate parking privileges (Section 5.11.1, item 6, Page 54), assistance with visa and passport processing (Section 5.11.1, item 7, Page 55), user-friendly automated reservation systems (Section 5.11.1, item 9, Page 55), and rebates (Section 7.2, Pages 60-61). In addition, we conclude that attachments C, D, E, F, and G must be withheld from required public disclosure under section 3(a)(10). All Seasons Travel Group, however, has not made a *prima facie* case that other portions of the proposal contain information constituting "trade secrets," nor are we aware that any of this information is privileged or made confidential by law. Accordingly, we conclude that the remainder of All Seasons Travel Group's proposal must be released.

Sato Travel contends that its entire proposal constitutes a "trade secret." On the basis of the documents submitted to us for review and Sato Travel's arguments supporting its assertion of "trade secret" protection, we conclude that Sato Travel has made a *prima facie* case that its proposal constitutes a "trade secret." Accordingly, we conclude that Sato Travel's proposal must be withheld from required public disclosure under section 3(a)(10) in its entirety.³

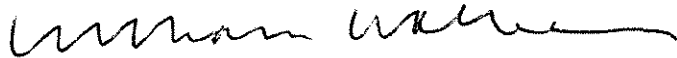
VIP Supertravel claims section 3(a)(10) protection for portions of its proposal relating to personnel, references, organizational structure, management information processing, discount programs, financial condition, optional services, consolidation of management information, rebates, and financial information. In addition, VIP Supertravel seeks to protect its customer list. We conclude that VIP Supertravel has made a *prima facie* case for the following information: client information, organizational structure, management information processing, discount

³Because we conclude that Sato Travel's proposal must be withheld in its entirety under section 3(a)(10), we need not consider at this time whether other asserted exceptions to required public disclosure apply.

programs, consolidation of management information, and financial information to the extent that such information reveals information about rebates. We conclude therefore that this information must be withheld from required public disclosure under section 3(a)(10) of the Open Records Act. VIP Supertravel, however, has not established a *prima facie* case that the remaining information--information relating to personnel, financial condition, and optional services--constitutes "trade secrets." Accordingly, the remainder of VIP Supertravel's proposal must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-688.

Yours very truly,



William Walker
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Opinion Committee

WW/GCK/lmm

Ref.: ID#s 17456, 17585, 17595, 17609
ID#s 17629, 17630, 17641, 17655
ID#s 17664, 17668, 17689, 17696
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